

S/N: 09/891,948
Reply to Office Action of July 22, 2003

Atty Dkt No. RPC 0553 PUS

Remarks

Claims 1-36 are pending in this application. Claims 1 and 36 have been amended, and no claims have been added or canceled. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

Final Rejection

The Examiner has made this action final even though it is a first action after the filing of a request for continued examination (RCE) with submission under 37 C.F.R. §1.114 (Office Action, p. 6). Applicant respectfully disagrees with the Examiner's reasoning behind making this action final. In the Advisory Action dated June 3, 2003, the Examiner indicated that the Amendment dated May 27, 2003 would not be entered since the "language added to claims 1 and 36 add to the complexity of the issues." Applicant asserts that the language added to claims 1 and 36 resulted in *new issues which require further consideration*, namely a new rejection of claims 1-19 and 36 under 35 U.S.C. § 112 to which Applicant has not been given an opportunity to respond. As such, Applicant asserts that a final rejection is not proper (*see* M.P.E.P. §706.07(b)), and withdrawal of the finality of this Office Action is respectfully requested. Applicant's representative discussed this matter with the Examiner during a telephone interview on today's date, wherein the Examiner indicated that he would investigate the matter further.

Rejection of Claims 1-19 and 36 Under 35 U.S.C. § 112

Claims 1-19 and 36 have been rejected under 35 U.S.C. § 112, first paragraph, due to the Examiner's interpretation of the term "uppermost portion." As the Examiner states, "one having ordinary skill in the art would expect an 'uppermost portion' to refer only to that portion which is at the extreme upper part of an element" (Office Action, p. 2). However, the Examiner has apparently equated "uppermost portion" with the entire upper wall portion 36, and construed the height of the uppermost portion to be the *length* of the upper wall portion. In order to expedite prosecution in this case, Applicant has amended claims 1 and 36 to recite "an uppermost height" or "a greatest height" of the second pair of opposed walls. This amendment is solely to address the rejection under 35 U.S.C. § 112. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

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**Rejection of Claims 1-36 Under 35 U.S.C. § 103(a)
over Apps '279 in view of Hammett, McGrath, and Sauey**

Claims 1-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,660,279 issued to Apps et al. ("Apps '279") in view of U.S. Patent No. 6,079,554 issued to Hammett ("Hammett"), U.S. Patent No. 6,047,844 issued to McGrath ("McGrath"), and U.S. Patent No. 2,929,530 issued to Sauey ("Sauey"). Specifically, the Examiner admits that Apps '279 discloses interior columns that are the same height as the wall structure, but asserts that Hammett, McGrath, and Sauey disclose interior columns of shorter height than the wall structure, such that it would have been obvious to modify the height of the internal columns of Apps '279 (Office Action, p. 3). Applicant respectfully traverses this rejection for the reasons stated below.

With reference first to McGrath, Applicant asserts that McGrath discloses a bottle support surface 46 having a top edge 51 which, depending upon the view, may possibly lie slightly below the handle on end wall 26 but which is the same height as the side walls 27 (*see McGrath, FIGS. 25 and 27*). McGrath does not disclose or suggest an interior member having a height less than an uppermost height or a greatest height of the second pair of opposed walls (i.e., side walls) as recited by Applicant in claims 1 and 36. Claims 20, 34, and 35 each recite "the interior columns having a height less than the height of the pylons" wherein the pylons are defined as part of the wall structure. With reference again to FIGS. 25 and 27, top edge 51 is possibly of lesser height than the handle, but is equal in height to the uppermost height of the remainder of the wall structure.

Furthermore, Applicant respectfully disagrees with the Examiner's assertion that "McGrath specifically teaches end walls of greater height than the interior columns" and that "it would have been obvious to apply the end wall teaching of McGrath ... to increase the height of the side walls to be above the interior member height" (Office Action, p. 4). The minute height difference between McGrath's top edge 51 and handle 26 is clearly not sufficient to provide any measurable benefit such as a reduction in container weight as in Applicant's invention. McGrath fails to provide any disclosure as to the reason for or advantages of a height difference between these two structures, such that the difference depicted may just be

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due to drawing inaccuracies. McGrath does not disclose or suggest the lower height of interior columns compared with the uppermost height of the second pair of opposed walls or the height of the pylons, and thus McGrath and Apps '279 cannot be properly combined to achieve Applicant's claimed invention.

Turning now to Hammett, Applicant submits that Hammett's spacer members 21 (*see Hammett*, FIG. 1) are not of sufficient height to provide lateral support to bottles loaded in the tray, but rather function only to "provide greater stability to a stack of empty trays" (*see Hammett*, col. 5, lines 59-61). Accordingly, there is no motivation or suggestion to combine Hammett and Apps '279. Furthermore, Hammett does not recognize problems solved by Applicant's invention, namely a reduction in the height of the interior columns below the height of the uppermost portion of the second pair of opposed walls or the height of the pylons to reduce tray weight, reduce mold time, and facilitate faster and more even cooling while still maintaining sufficient height to provide lateral support for loaded bottles (*see*, p. 8, line 20 - p. 9, line 5). As such, Applicant asserts that Apps '279 and Hammett cannot be properly combined to achieve Applicant's claimed invention.

Lastly, with reference to Sauey, a shotgun shell box is disclosed which includes a cover 12 and holds cylindrical shotgun shells below the top edge of side walls 22, 24 (*see Sauey*, col. 1, lines 47-49; col. 2, lines 16-20; FIG. 1). Sauey does not disclose or suggest a low depth tray having side walls lower than the height of its stored product as in Applicant's invention, but rather discloses a box which completely contains its stored product and which, due to its cover, prohibits the storage of a product which extends beyond the height of the side walls. As such, there is no motivation to combine Sauey and Apps '279 and, in fact, Sauey teaches away from Applicant's claimed invention. Again, Sauey fails to appreciate this solution achieved by Applicant's invention, wherein the interior column height is reduced compared with the height of the uppermost portion of the second pair of opposed walls or the height of the pylons while still maintaining the stability of stored bottles having a height greater than the wall structure. For these reasons, Sauey and Apps '279 cannot be properly combined to produce Applicant's invention.

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Therefore, Applicant believes that independent claims 1, 20, and 34-35 are patentably distinguishable over the combination of Apps '279 with any or all of the Hammett, McGrath, and Sauey references. Accordingly, reconsideration and withdrawal of the rejection of these claims, and their corresponding dependent claims, under 35 U.S.C. § 103(a) is respectfully requested.

**Rejection of Claims 1-10, 12-34, and 36 Under 35 U.S.C. § 103(a)
over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey**

Claims 1-10, 12-34, and 36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793") or U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002") in view of Hammett, McGrath, and Sauey. Again, the Examiner admits that neither Apps '793 nor Apps '002 disclose interior columns that are of lesser height than the wall structure, but asserts that Hammett, McGrath, and Sauey disclose such a feature (Office Action, p. 4). For the reasons explained above for each of the Hammett, McGrath, and Sauey references, Applicant asserts that the combination of these references with either Apps '793 or Apps '002 fails to achieve Applicant's claimed invention as recited in claims 1, 20, 34, and 36. Accordingly, Applicant believes that independent claims 1, 20, 34, and 36 along with corresponding dependent claims 2-10, 12-19, and 21-33, are patentably distinguishable over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey, and therefore respectfully requests reconsideration and withdrawal of this rejection.

Conclusion

In summary, Applicant believes that the claims, as amended, now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Respectfully submitted,

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